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No. 90-1546

IN THE

Supreme Court of the United States

October Term, 1990

ALFRED BEAVERS and ANNIE BEAVERS,
Petitioners,

vs.

JEFFREY WOODS AND JOYCE WOODS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 51 and the "plain error" doctrine prohibit petitioners from challenging the jury instructions given by the trial court.

2. Whether the trial court's instructions to the jury authorized an award of presumed damages in contravention of this Court's holding in *Memphis Community School District v. Stachura*, 477 U.S. 299 (1986).

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The respondents, Jeffrey and Joyce Woods, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's judgment below.

STAEMENT OF THE FACTS

Respondents hereby adopt the statement of facts contained within the opinion of the Sixth Circuit (Pet. 10-11). Respondents note that petitioners did not challenge in their appeal to the Sixth Circuit the sufficiency of the evidence to support a violation of the Fair Housing Act. The petitioners acknowledged in the court below that sufficient evidence existed to support a finding that a violation occurred. Only the issue of the proper measure of damages remains.[1]

[1] A third defendant, Beavers Rentals, did not file an appeal from the judgment. The entire judgment has been collected and fully satisfied.

REASONS WHY THE PETITION SHOULD BE DENIED

1. Federal Rule of Civil Procedure 51 Supports Denial of The Writ.

Federal Rule of Civil Procedure 51 requires counsel objecting to a jury instruction to "state distinctly the matter to which he objects and the grounds of his objection" or be precluded from assigning as error the charge given. Petitioners' failure to object to the jury instruction at trial precludes this Court's review of the charge.

The holding of *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), cited by petitioners, does not require a different result. In *City of Newport* both the district court and the court of appeals reached and fully adjudicated the merits of the claimed error. Thus, this Court reasoned that it would serve none of the interests of Rule 51 to refuse to reach the merits. In the case at bar, however, petitioners first raised the issue of alleged error in the jury instruction in the court of appeals. The Sixth Circuit applied the plain error doctrine and did not definitively rule on the merits of the petitioners' claim. Under these circumstances, *City of Newport* does not justify plenary review by this Court.

Petitioners also suggest that their Rule 51 defect should be ignored and full review on the merits had because this case presents "a novel and important issue." (Pet. 7-8). The issue of measuring damages under the Fair Housing Act is not so unique or significant that it cannot await further development and consideration by the lower courts. Cases tried since the Fair Housing Amendments Act of 1988 became effective are still working their way through the district courts and the

courts of appeals. To our knowledge there exists no conflict in the circuits on the issue presented by petitioners. It would be premature for this Court to address an issue that has yet to be fully considered by any court, particularly when the petitioners' own procedural errors precluded review on the merits by the courts below.

2. There is No Conflict Between The Ruling Below And This Court's Holding in *Memphis Community School District v. Stachura*, 477 U.S. 299 (1986).

Respondents submit, as set forth above, that petitioners have failed to preserve the issue of whether the jury instruction complained of was appropriate. However, assuming the issue has been preserved, the ruling by the court below does not conflict with the principles set forth in *Stachura*.

The jury instructions in *Stachura* were found faulty because they called for a subjective appraisal of the value of a constitutional right.

> The precise value you place upon any constitutional right which you find was denied to plaintiff is within your discretion. You may wish to consider the importance of the right in our system of government, the role which this right has played in the history of our republic. . . .

477 U.S. at 303. This Court emphasized that "*no* compensatory damages could be awarded for violation of that right absent proof of actual injury." *Id.* at 308 (emphasis in original).

In the case at bar, the court's instruction did *not* call upon the jurors to place a value on "any constitutional right which you find was denied," nor did it list nebulous

factors for the jury to consider. Rather, the trial court instructed the jurors to compensate plaintiffs for a violation of a specific law, the Fair Housing Act, which grants a statutory right not to be discriminated against in the rental of property on the basis of race, and

> in an amount . . . that you would consider necessary to make each of you whole if you were deprived of your own right not to be discriminated against in this particular respect.

The trial court's instruction on this aspect of damages mirrored language used in *Wayne v. Venable*, 260 F. 64 (8th Cir. 1919), a case cited approvingly by the Supreme Court in *Stachura* as supporting "an award of presumed damages for a nonmonetary harm that cannot easily be quantified." *Stachura, supra*, 477 U.S. at 311, n.14.

> When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate . . . In the eyes of the law this right is so valuable that damages are presumed from the wrongful deprivation of it without evidence of actual loss of money, property, or any other valuable thing, and the amount of the damages is a question peculiarly appropriate for the determination because each member of the jury has personal knowledge of the value of the right.

Stachura, 477 U.S. at 311 (*quoting Wayne, supra*).

Petitioners overlook the fact that Congress in the Fair Housing Act created legal rights the violation of which standing alone gives rise to a claim for damages. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-74 (1982). A person who has been the object of a discriminatory act in violation of the Act "has suffered injury in precisely the form the statute was intended to guard against. . . ." *Id.* at 373. The injury exists solely

by virtue of the existence of the statute creating the legal right. *Id.* Only the jury is empowered to place a value on this statutory injury, which is all that the instruction at bar called upon the jury to do. In its ruling below, the Sixth Circuit observed that a discriminatory act in violation of the Fair Housing Act is a type of injury that is likely to have occurred but "impossible to measure" (Pet. at 18) (quoting *Stachura*, 477 U.S. at 311).

Thus, respondents submit that there is no conflict between the Sixth Circuit's ruling in this case and this Court's holding in *Stachura*, contrary to petitioners' assertions. Further, respondents submit that this case does not present novel and important issues of law for review. The Sixth Circuit determined not that presumed damages were available in Fair Housing cases, but only that plain error was not present. The issue of the propriety of presumed damages must be addressed squarely by the Sixty Circuit as well as by other courts of appeal before it will be ripe for review in this Court.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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